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No. 82-1367

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ROADWAY EXPRESS, INC.,
Petitioner,

V.

LAWRENCE G. WARREN,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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QUESTIONS PRESENTED

1. Whether the Georgia courts gave constitutionally required full faith and credit to Tennessee law in awarding Respondent supplemental workers' compensation benefits under Georgia law after Respondent previously received workers' compensation benefits under Tennessee law.

2. Whether Georgia had sufficient contact with Respondent's employment by Petitioner for the Georgia courts to satisfy due process in awarding Respondent supplemental workers' compensation benefits under Georgia law.

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STATEMENT OF THE CASE

I.

PROCEEDINGS BELOW

On October 20, 1978, Lawrence G. Warren (hereinafter referred to as "Claimant") was injured in an accident in Indiana while driving a truck for Roadway Express, Inc. (hereinafter referred to as "Petitioner"). He received workers' compensation benefits in Tennessee until October 12, 1979. Claimant then filed for benefits under the Georgia Workers' Compensation Act. After a hearing, the Administrative Law Judge issued an award on August 6, 1980, which award found Georgia's State Board of Workers' Compensation to have jurisdiction over the claim and found Claimant to have been disabled continuously from the date of the accident; the award

directed the Petitioner to pay Claimant weekly disability benefits and medical benefits under Georgia law and allowed Petitioner an appropriate credit for all amounts previously paid pursuant to Tennessee law.

Petitioner appealed this award to the chairman and two directors of the State Board of Workers' Compensation which affirmed the original award on January 8, 1981. Petitioner then appealed to the Superior Court of Fulton County, Georgia which affirmed the decision of the State Board of Workers' Compensation of Georgia in an order dated December 1, 1981.

On December 31, 1981, Roadway Express, Inc. filed its application for appellate review to the Supreme Court of Georgia. By order dated January 7, 1982, the Supreme Court of Georgia ordered that this application be transferred to the Court of Appeals of Georgia. The Court of Appeals granted Roadway's application for appellate review by order dated January 26, 1982. Pursuant to this order, Roadway Express, Inc. filed its notice of appeal to the Court of Appeals on January 29, 1982.

On September 16, 1982, the Court of Appeals of Georgia affirmed the previous awards and orders. Petitioner's Motion for Rehearing was denied on October 7, 1982; its Application for Certiorari to the Supreme Court of Georgia was denied on November 16, 1982.

II.

STATEMENT OF FACTS

Claimant filled out a written application for employment at Petitioner's office in DeKalb County, Georgia in March 1963 and was hired at that time as an over-the-road truck driver operating out of Atlanta, Georgia; he

drove to and through various states in the eastern part of the United States. Claimant was injured in 1967 and drew workers' compensation benefits from 1967 through 1971.

In 1969, during this four year period of disability when Claimant was not actively working for Petitioner, Petitioner changed its method of operation from two drivers per truck to one. At the time of this change in operations, Petitioner had 343 truck drivers operating out of Atlanta, Georgia and Claimant was number 320 on the seniority list. Claimant was offered a choice of job locations at the time of this change of operations *if* his seniority would permit him to be accepted at such job locations. If Claimant had made choices which were cut off by the seniority system, he would have been placed in a lay-off status. Accordingly, because Claimant was worried that he would be too low in seniority in Atlanta whenever he might be able to return to work and was worried that he might not be on the payroll at that time, he listed Nashville, Tennessee as his first choice. Then, on August 16, 1969, Petitioner executed an "employment status form" which mentioned nothing about "reemployment" but placed the words "change of operations" after the words "justification . . . for transfer."

Claimant remained in Atlanta until 1971 when his disability from his 1967 accident ended. Petitioner refers to this return to work exclusively as "reemployment"; such terminology ignores the facts of the return to work as well as Petitioner's own "employee status form" of March 10, 1971. That form makes reference to a "return to work from extended sick leave." It gives the seniority date as March 23, 1963. Furthermore, Petitioner checked the block labeled "reinstatement" and not the blocks labeled "new hire" and "rehire."

When Claimant returned to work at the Nashville terminal in 1971, his initial truck driving was primarily from Nashville to Atlanta, Georgia. Then, for four years, his primary route was from Nashville to another city in Tennessee. Claimant sustained the subject injury on October 28, 1978 in Indiana while on his then regular run from Nashville to Chicago.

Soon after the accident, Claimant signed workers' compensation forms providing for payment of benefits under Tennessee law. The circumstances surrounding the signing of these forms are described in the following testimony of Claimant:

> A. I was required to sign a form before they gave me a workmans' compensation check.
>
> . . . .
>
> Q. And you signed that to get benefits under the Tennessee Act; is that correct?
>
> A. I signed it for benefits under workmans' compensation. I wasn't aware of Tennessee, Georgia or any other—

Petitioner unilaterally suspended benefits on October 12, 1979. Following this suspension of benefits, Claimant initiated the Georgia Workers' Compensation claim which is the subject of the case at bar.

SUMMARY OF ARGUMENT

The exercise of jurisdiction by the Georgia courts over Claimant's workers' compensation claim against Petitioner did not violate the Full Faith and Credit Clause of the Constitution. The plurality in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980), held that full faith and credit does not preclude successive workers' compensa-

tion awards. The concurring opinion in that case followed *Industrial Commission of Wisconsin v. McCartin*, 330 U.S. 622 (1947), which held that only unmistakable language of a state's statutes or judicial opinions barring supplemental awards in other states gives rise to a full faith and credit defense to any such supplemental award. Neither Tennessee's statutes nor its judicial opinions contain such unmistakable language; accordingly, full faith and credit did not bar the Georgia courts' exercise of jurisdiction over Claimant's workers' compensation claim.

The Due Process Clause of the Constitution does not prohibit the Georgia courts' exercise of jurisdiction over the subject claim. The significant contact test set forth in *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981), has been more than satsified by the existence of a Georgia employment contract which has governed the employment relationship between Claimant and Petitioner since 1963. Furthermore, Claimant worked in Georgia for several years and, following his transfer to Tennessee, continued employment related travel to Georgia for a period of time.

ARGUMENT AND CITATION OF AUTHORITY

Rule 17.1 of this Court sets forth examples of those types of cases for which the granting of certiorari might be appropriate. Petitioner restricts its arguments to contentions that the decision of the Georgia Court of Appeals "is in direct conflict with constitutional authority set forth in decisions of this Court" and invites this Court "to further clarify the full faith and credit effect of workers' compensation decisions" since *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980). To the contrary, as will be shown in this brief, the Court of Appeals

of Georgia correctly decided this workers' compensation matter within the constitutional guidelines as set by this Court. Furthermore, the decision of the Court of Appeals of Georgia was correct regardless of one's interpretation of *Thomas* and, accordingly, no clarification of that case would either be needed or appropriate.

I.

THE FULL FAITH AND CREDIT CLAUSE DOES NOT PRECLUDE A SUPPLEMENTAL AWARD UNDER THE GEORGIA WORKERS' COMPENSATION ACT AFTER PAYMENT OF BENEFITS UNDER THE TENNESSEE ACT.

A. Acceptance of Benefits Under One State Act Does Not Preclude Recovery of Supplemental Benefits Under Another State Act.

Contrary to Petitioner's argument, the plurality opinion in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980) held that the Full Faith and Credit Clause of th Constitution (U.S. Const. art. IV, § 1) does not requir one state to deny workers' compensation benefits under that state's law because of an award in another state. In *Thomas*, the Claimant sought a workers' compensation award in the District of Columbia after he had already received a Virginia award. The Court found that the District of Columbia was not precluded under the Full Faith and Credit Clause from making a supplementary award under the District of Columbia Workers' Compensation Statute. Instead, the Court found that full faith and credit only required the District of Columbia to recognize and give the employer credit for the award granted under the Virginia statute. The Court reasoned that the Virginia court had no authority to pass on the petitioner's rights under the District of Columbia law.

Therefore, there was no reason to object to a fresh adjudication of claimant's rights under that law in a hearing in the District of Columbia. 448 U.S. at 282-283.

The interest of Tennessee in not having its law "thwarted" by the Georgia courts is not infringed upon by the Georgia courts making a separate determination of Mr. Warren's rights under Georgia law. As with the Virginia courts' determination in *Thomas*, the Tennessee courts had no authority to determine the claimant's rights under Georgia law. [1] Full faith and credit need only be given to the determination which the Tennessee courts had the authority to make. Therefore, under the rationale in *Thomas*, there can be no constitutional objection to a fresh adjudication of the claimant's rights under Georgia law.

The Court in *Thomas* specifically found that a state did not have the authority to give extraterritorial effect to awards under its own workers' compensation statute. The Court stated:

> To vest the power of determining the extraterritorial effect of a State's own laws and judgments in the State itself risks the very kind of parochial entrenchment on the interest of other States that it was the purpose of the Full Faith and Credit Clause and other provisions of Article IV of the Constitution to prevent.

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[1] The Court stated:

> Typically a workmens' compensation tribunal may only apply its own state's law. In this case, the Virginia Commission could and did establish the full measure of petitioner's rights under Virginia law, but it neither could nor purported to determine his rights under the law of the District of Columbia.

448 U.S. at 282.

Id. at 272. Thus, under the rationale in *Thomas*, Tennessee law constitutionally cannot exclude supplemental awards in other states.

Petitioner argues that the plurality opinion in *Thomas* advocates a balancing of interest test to determine whether a second governmental entity could constitutionally provide benefits to a workers' compensation claimant. The plurality in *Thomas*, in fact, holds that the second governmental entity must meet a threshold level of interest in order to apply its law; no balancing test is provided. The threshold set by the Court is shown in the following holding:

> We therefore would hold that a State has no legitimate interest within the context of our federal system in preventing another State from granting a supplemental compensation award *when the second State would have had the power to apply its workmen's compensation law in the first instance.* The Full Faith and Credit Clause should not be construed to preclude successive workmen's compensation awards. (emphasis added)

Id. at 286.

In the instant case, Claimant unquestionably was eligible to receive benefits under the Georgia Workers' Compensation Act.[2] Therefore, the Full Faith and Credit Clause does not constitutionally prohibit Georgia's State Board of Workers' Compensation from awarding him benefits subsequent to the unilateral termination of

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[2] The decision of the Georgia Court of Appeals affirmed the liability of Petitioner to Claimant for workers' compensation benefits under Georgia law. The only issues raised by Petitioner in this Court are the constitutional questions of due process and full faith and credit; therefore, neither Claimant's disability nor Claimant's meeting of other prerequisites to receiving Georgia workers' compensation benefits are at issue in this Court.

benefits by Petitioner in Tennessee. Under *Thomas*, the Georgia Board could adjudicate Claimant's rights under Georgia law. Full faith and credit only bars the Georgia Board from redetermining Mr. Warren's rights under Tennessee law.

B. Even If the Plurality in *Thomas* Is Not Found to Be Determinative of the Full Faith and Credit Issue, the Prior Receipt of Tennessee Benefits Did Not Bar Supplemental Georgia Benefits.

While the plurality in *Thomas* presented a new analysis of the extraterritorial effect of workers' compensation awards, the Georgia courts were authorized to make a supplemental award under the law which existed prior to *Thomas* and which was followed by the three Justices concurring in that case. In *Industrial Commission of Wisconsin v. McCartin*, 330 U.S. 622 (1947),[3] the Court held that the extraterritorial effect under full faith and credit would only be given where there was some unmistakable language by a state legislature or judiciary which would warrant accepting such a construction. *Id.* at 628. Petitioner erroneously cites the cases of *True v. Amerail Corp.*, 584 S.W.2d 794 (Tenn. 1979), and *Tidwell v. Chattanooga Boiler & Tank Co.*, 163 Tenn. 420, 43 S.W.2d 221 (1931), for the proposition that the Tennessee judiciary has stated that under Tennessee law a claimant makes a irrevocable election to proceed under the workers' compensation law of the state in which he first receives benefits. In both of those cases, the court considered a

[3] *McCartin* has been recognized at least to have limited severely the holding in Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1931). *See, e.g.*, Thomas v. Washington Gas Light Co., supra. Subsequent State cases overwhelmingly followed *McCartin* and applied the "unmistakable language" test in permitting successive workmen's compensation awards. *Id.* at 276, n. 22.

situation where the claimant had received benefits in another state and then applied for benefits in Tennessee. Thus, no unmistakable statement of the extraterritorial effect of *Tennessee law* was or could have been made in those cases. In addition, the court in *True* specifically rejected the proposition that full faith and credit barred the subsequent Tennessee claim. Citing *McCartin*, the court stated:

> While the trial judge did not specifically sustain so much of the motion for summary judgment as relied upon the full faith and credit clause, *lest there by any confusion about the matter, we hold that the full faith and credit clause does not preclude the Tennessee suit.* (emphasis added)

584 S.W.2d at 798. Thus, the unmistakable language required under the rule in *McCartin* is not apparent in Tennessee law. Petitioner's reliance on an alleged "irrevocable election doctrine" in Tennessee is clearly misplaced.

C. Claimant's Acceptance of Tennessee Benefits Did Not Constitute a Determination of the Existence of a Tennessee Contract of Employment.

The decisions of the Georgia courts in this case found and affirmed that Claimant entered into only one employment contract with Petitioner and that said contract was made in Georgia in 1963. Such a finding was necessary to fix jurisdiction in Georgia.[4] Petitioner now argues that those findings violated the principles of *res judicata*

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[4] Off. Code of Ga. Ann. § 34-9-242 (1981) [Ga. Code Ann. § 114-411 (1933)] requires that an employee who is injured in another state is entitled to Georgia benefits if, *inter alia*, "the contract of employment was made in this State. . . : Provided, his contract of employment was not expressly for service exclusively outside of the State: . . ."

because the acceptance of Tennessee workers' compensation benefits "constitutes a finding that his contract of employment was entered into in Tennessee." More specifically, Petitioner cites Tenn. Code Ann. § 50-917 which requires *either* that the contract for hire be made in that State *or* that a claimant's employment was "principally localized within this State;" then Petitioner makes the erroneous statement that the "majority of Claimant's duties for [Petitioner] occurred outside of Tennessee on his run to Chicago." This argument is unfounded for several reasons.

First, immediately after his transfer to Tennessee from Georgia, the Claimant's truck driving was primarily from Nashville, Tennessee to Atlanta, Georgia. Then, as found by Georgia's State Board of Workers' Compensation, the Claimant had a run from Nashville, Tennessee to Columbia, Tennessee "for the next four years." In addition, even when the Claimant was on the "Chicago run" from Nashville, where was his employment "principally localized?" It surely was not "localized" in Kentucky or Indiana through which he drove to get to Chicago. The remaining choices are Tennessee and Illinois; the Claimant's supervisors were in Tennessee, the terminal out of which he operated was in Tennessee, and he lived in Tennessee. Accordingly, it is obvious that Claimant's employment was "principally localized" in Tennessee.

Second, Plaintiff's argument ignores the fact that there was no Tennessee adversary proceeding which could have been the basis for the application of the theory of *res judicata*. Neither the issue of the existence of a Tennessee contract of employment nor the issue of the principal location of Claimant's employment had ever been litigated; therefore, the most fundamental prerequisite for

the application of the theory of *res judicata*—a full and fair opportunity to litigate a claim or issue—is lacking.[4]

No action taken in Tennessee either by Petitioner or Claimant could have been the basis for raising either full faith and credit or *res judicata* as bars to prevent the Georgia courts from making a determination of Claimant's rights under the Georgia Workers' Compensation Act. Both the plurality's approach in *Thomas* and the holding in *McCartin* sanction the Georgia courts' entertaining of Petitioner's claim and awarding of benefits to him.

II.

SUFFICIENT CONTACT EXISTED WITH THE STATE OF GEORGIA FOR THE GEORGIA COURTS CONSTITUTIONALLY TO APPLY GEORGIA'S WORKERS' COMPENSATION STATUTE.

Georgia had significant contact with Claimant's employment, and, therefore, could constitutionally apply its substantive law under the principles set forth in *Alaska Packers Ass'n v. Industrial Accident Commission*, 294 U.S. 532 (1935), and *Allstate Insurance Co. v. Hague*, 449 U.S. 302 (1981). In *Alaska Packers* the Court upheld California's application of its workers' compensation act for a non-resident who was hired in California for work in Alaska. The Court found that the choice of California law was not "so arbitrarily unreasonable as to amount to a denial of due process". 294 U.S. at 542. In the instant case, the contract of employment was signed in Georgia and the employee worked out of Atlanta for four years.

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[4] Kremer v. Chemical Construction Corp., ___ U.S. ___, 102 S.Ct. 1883, 1897, n. 22 (1982).

Claimant was then given an extended leave for an injury before he was transferred to Nashville. Contrary to Petitioner's assertions, there was no reemployment but merely a reactivation to working status. No new employment contract was ever signed; nor was any reference made to reemployment. The record is clear that Claimant's employment was never terminated by Roadway. At all times he worked under his original employment contract which was signed in Georgia. Certainly, then, the application of Georgia law was not arbitrary; nor did it deny due process.

The interest of a state in protecting the rights of workers hired in that state is without question. *See, e.g., Alaska Packers.* Petitioner correctly recites the standard stated in *Hague* to satisfy due process. In order for the forum state to apply its substantive law in a constitutionally permissible manner, it must have a significant contact or aggregation of contacts. 449 U.S. at 308. The mere fact that the Claimant was stationed in Nashville after returning from his leave does not lessen the interest of Georgia in protecting that employee. In *Alaska Packers*, the Court stated:

> But where the contract is entered into within the state, even though it is to be performed elsewhere, its terms, its obligations and its sanctions are subject in some measure, to the legislative control of the state. The fact that the contract is to be performed elsewhere does not of itself put these incidents beyond the reach of the power which a state may constitutionally exercise.

294 U.S. at 540-541.

Petitioner has incorrectly relied on the cases of *Home Insurance Co. v. Dick*, 281 U.S. 397 (1930), and *John Hancock Mutual Life Isnsurance Co. v. Yates*, 299 U.S.

178 (1936), for the proposition that the application of Georgia law under Off. Code of Ga. Ann. § 34-9-242 (1981) [Ga. Code Ann. § 114-411 (1933)] was unconstitutional. While it is true that in *Dick* and *Yates* the Court found that significant contacts did not exist, these cases are not applicable here. As pointed out in *Hague*, the Court in *Dick* and *Yates* considered the situation where the forum state had only an insignificant contact with the parties and the occurrence or transaction. Under those circumstances, nominal residence in *Dick* and a post occurrence change of residence to the forum state in *Yates*, the Court found that application of the forum state's law was unconstitutional. In the instant case, the contacts with Georgia are far from insignificant. The contract for employment was signed in Georgia. The employee worked in Georgia for several years and received benefits in Georgia for a previous injury. It was only on returning to work that Claimant reluctantly transferred to Nashville, Tennessee. In applying Georgia law, the Georgia courts rightfully protect workers who sign contracts of employment in that State. The transfer to Tennessee did not cut off Georgia's established interest.

As was true with Allstate Insurance Company in *Hague*,[4] Petitioner at all times has been present and doing business in Georgia. Thus, Petitioner cannot claim unfamiliarity with the laws of Georgia nor surprise that Georgia courts would apply forum law. Because Petitioner was aware that Claimant was hired in Georgia, was employed in Georgia for a significant portion of the time he was associated with the company, and received workers' compensation benefits in Georgia as a result of his 1967 accident, Petitioner must have anticipated that

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[4] 449 U.S. at 317.

forum law might be applied. This is especially true because of Petitioner's status as a self-insurer under the Georgia Workers' Compensation Act. In this situation, Petitioner clearly received the fundamental fairness required by the Due Process Clause.

In summary, the significant contacts required under *Hague* were present, and the Georgia courts did not deny Petitioner due process by applying Georgia law to the Claimant's case.

CONCLUSION

The Georgia court's application of Georgia law to the case at bar in no way violated either the Full Faith and Credit or the Due Process Clauses of the Constitution. Under the facts of this case, Georgia gave Tennessee law full faith and credit as required under both the plurality opinion in *Thomas* and the *McCartin* decision. Furthermore, the Georgia employment contract and Claimant's history of employment in Georgia constituted sufficient contacts to satisfy the requirement of due process. For these reasons, Claimant respectfully request that the petition for a writ of certiorari be denied.

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